

**STATE OF TENNESSEE**

OFFICE OF THE  
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February 26, 2002

Opinion No. 02-021

Post-Mortem Examinations

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**QUESTIONS**

1. Does the Post-Mortem Examination Act, Tenn. Code Ann. §§ 38-7-101, *et seq.* authorize a county medical examiner, duly elected or appointed under the provisions of Tenn. Code Ann. § 38-7-104, to deputize a non-physician investigator to perform the county medical examiner's powers and duties under the Act?
2. If such statutory authority exists, what are the duties and scope of activities of such investigator?

**OPINIONS**

1. No provision in Tenn. Code Ann. §§ 38-7-101, *et seq.* authorizes a county medical examiner to deputize a non-physician investigator to perform the county medical examiner's powers and duties under the Post-Mortem Examination Act.
2. In view of our opinion concerning the first question, we do not address the second.

**ANALYSIS**

The office of the county medical examiner is established in the Post-Mortem Examination Act, Tenn. Code Ann. §§ 38-7-101, *et seq.* The qualifications of the county medical examiner are set forth in Tenn. Code Ann. § 38-7-104 (a), which provides that a county medical examiner shall be a physician who either is a graduate of an accredited medical school authorized to confer upon graduates the Doctor of Medicine degree (M.D.) and who is duly licensed in Tennessee, or is a graduate of a recognized osteopathic college authorized to confer the degree of Doctor of Osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee. The section also specifies the manner in which a county medical examiner is elected (or appointed, in those counties having a metropolitan form of government) and the compensation to be fixed by the county legislative body or other fiscal body of the county, either on a

salaried basis or “for each death the county medical examiner investigates,” as well as a fee to be paid to the county medical examiner, fixed by the commissioner of health and approved by the public health council, “for the filing of a satisfactory report of each investigation.”

The powers and duties of the county medical examiner are described in several sections of the Act. When a death “from sudden violence or by casualty or by suicide, or suddenly when in apparent health, or when found dead, or in prison, or in any suspicious, unusual or unnatural manner, or where the body is to be cremated” is reported as provided in Tenn. Code Ann. § 38-7-108, “it is the duty of the county medical examiner to immediately make an investigation of the circumstances of the death,” and to record and process the county medical examiner’s findings as provided in Tenn. Code Ann. § 38-7-109. Under the latter section, the duty to investigate the circumstances of a death where a death is reported under suspicious, unusual or unnatural circumstances devolves upon the county medical examiner, and is ministerial in nature. *Dunbar v. Strimas*, 632 S. W. 2d 558 (Tenn. Ct. App. 1981). When a death occurs under the circumstances set forth in the Act, under Tenn. Code Ann. § 38-7-108 (b) the body “shall not be removed from its position or location without authorization by the county medical examiner, except to preserve the body from loss or destruction or to maintain the flow of traffic on a highway, railroad, or airport.” Further, neither a body subject to post-mortem examination under the Act, nor a fire death victim, shall be embalmed without authorization by the county medical examiner. Tenn. Code Ann. §§ 38-7-108 (b) and 38-7-116 (b). Moreover, under Tenn. Code Ann. § 38-7-106 (a) a county medical examiner may perform or order an autopsy on the body of any person in a case involving a homicide, a suspected homicide, a suicide, or a violent, unnatural or suspicious death, and shall notify the next of kin if known or readily ascertainable. A county medical examiner also may, under Tenn. Code Ann. § 38-7-107, request a district attorney general to petition a circuit or criminal court judge to order a body disinterred and an autopsy performed when a person dies whose death occurred under the circumstances outlined in the Act, and the person was interred before an autopsy could be performed. Last, under Tenn. Code Ann. § 38-7-106 (b) upon request of an authorized official of a not-for-profit corporation either chartered under state law or authorized to do business in the state and certified by the Eye Bank of America to obtain, store and distribute donor eyes and eye tissues to be used for corneal transplants, for research and for other medical purposes, the county medical examiner may permit the removal of the cornea or corneal tissue from the body of the deceased person in accordance with applicable law.

There are several references in Tenn. Code Ann. §§ 38-7-101, *et seq.* to deputies, assistants and pathologists who may be deputized or employed, either by the county medical examiner or by the county itself, under various specific circumstances. Tenn. Code Ann. § 38-7-104 (b) provides in pertinent part:

*A county medical examiner, when temporarily unable to perform the duties of the office, shall have the authority to deputize any other physician in the area to act as county medical examiner during the absence. If the county legislative body fails to certify a county medical examiner for a county or if the county medical examiner resigns or is unable to fulfill the duties of the office during the interim between county legislative body sessions and a deputy has not been appointed by the county medical*

*examiner*, the chief medical examiner shall have the authority to appoint a county medical examiner to serve until the next session of the county legislative body.

(Emphasis added.) Further, Tenn. Code Ann. § 38-7-105 (a) provides that when the state medical examiner’s facility is not available, the county medical examiner “may employ a pathologist certified by the American Board of Pathology, or eligible for such certification, to perform an autopsy as provided by this chapter.” In addition, Tenn. Code Ann. § 38-7-105 (b) provides that any county having a metropolitan form of government and a population of over four hundred fifty thousand (450,000) according to the 1990 federal census or any subsequent federal census

may employ one (1) or more pathologists, certified by the American Board of Pathology, to be compensated on a salaried basis, as assistant county medical examiners who may perform autopsies as provided by this chapter regardless of the availability of a state medical examiner’s facility.

Therefore, the subsequent reference in Tenn. Code Ann. § 38-7-110 (e) to subpoena of a medical, mental health or hospital record needed to prepare a post-mortem examination report pertaining to a case under investigation under Tenn. Code Ann. § 38-7-106 by “each county medical examiner and their deputies, assistants and pathologists” necessarily refers to the county medical examiners and to physicians duly deputized or employed, either by the county medical examiner or by the county itself, pursuant to the above sections.

We find no reference in Tenn. Code Ann. §§ 38-7-101, *et seq.* authorizing a county medical examiner to deputize a non-physician investigator to perform the county medical examiner’s powers and duties under the Act. The fact that the Act addresses specifically the manner in which the duties of the county medical examiner may be delegated, either by deputizing another physician under Tenn. Code Ann. § 38-7-104 (b), or by employing a pathologist under Tenn. Code Ann. 38-7-105 (a), or by employing one or more pathologists as assistant county medical examiners under Tenn. Code Ann. § 38-7-105 (b), underscores our conclusion that the Act provides for physicians only to act in a county medical examiner’s stead.

We also considered any implications of Tenn. Code Ann. § 8-9-101:

The county legislative body is hereby granted discretionary authority to create the office of county coroner. If such office is created, the county legislative body shall elect a coroner who shall hold office for two (2) years, and until a successor is qualified. *However, in those counties that have a county medical examiner, the county legislative body may vest the duties of the county coroner in the county medical examiner and shall not be required to elect a county coroner.*

(Emphasis added.) If under Tenn. Code Ann. §§ 8-9-101, *et seq.* a county legislative body does vest the

duties of the county coroner in the county medical examiner, and hence the duties of the county coroner essentially are subsumed in the duties of the county medical examiner, the two statutes should be construed *in pari materia*. The coroner's authority to appoint one or more deputies is provided by Tenn. Code Ann. § 8-9-105 (a):

Coroners have the power to appoint one (1) or more deputies, and to require them to give bond, with security, to save their respective principals harmless, and for the faithful discharge of their duties.

That provision should be read in tandem with the county medical examiner's authority under Tenn. Code Ann. § 38-7-104 (b) to deputize "any other physician in the area." Tenn. Code Ann. 8-9-105 (b) supports our interpretation:

In those counties which have the office of county coroner, the office of deputy coroner or deputy coroners may be created by private act, *and such deputy coroner or deputy coroners shall be authorized to perform all duties which can now be performed by the coroner.*

(Emphasis added.) Clearly, when the duties of a county coroner have been vested in a county medical examiner under Tenn. Code Ann. § 8-9-101, only a deputy who is a physician would be authorized to perform all duties which can be performed by a county medical examiner in whom is vested the duties of the county coroner, especially since under Tenn. Code Ann. § 38-7-106 a county medical examiner may perform or order an autopsy.

Moreover, under Tenn. Code Ann. § 38-7-102 the Department of Health is authorized and empowered to create and maintain a post-mortem examination division or service, and

[t]he commissioner of health, acting for the state and with the approval of the governor, shall appoint a chief medical examiner to direct the division or service, *and such other personnel as the commissioner may find appropriate to the enforcement of the duties and the powers of this chapter*; and is hereby authorized and empowered to spend such funds as may be appropriated for the enforcement of this chapter.

(Emphasis added.) (Tenn Code Ann. § 38-7-103 (b) also authorizes the chief medical examiner to appoint, with the commissioner's approval, any deputy and assistant state medical examiners needed for regional administrative, professional and technical duties as well as certain educational tasks; these state medical examiners shall have the same qualifications as the chief medical examiner.)

The Post-Mortem Examination Act thus provides for appointment of personnel other than the chief medical examiner in the post-mortem examination division or service as may be appropriate to the enforcement of the duties and powers of the Act, but does not authorize a county medical examiner or a

county to deputize or employ non-physician personnel in order to carry out the county medical examiner's duties and powers under the Act. This falls under the principle of statutory construction *expressio unius est exclusio alterius*, meaning the expression of one thing is the exclusion of another. Had the Legislature intended to authorize a county medical examiner or a county to deputize or employ personnel other than physicians in order to carry out the duties of a county medical examiner, it could have so provided in the Act, but only physicians are mentioned as fulfilling that role. The fact that the Act grants broad powers to the commissioner of the Department of Health to appoint "such other personnel" as the commissioner may find appropriate to enforce the duties and powers of the Act, coupled with the restricted grant of authority in the Act to the county medical examiner or county to deputize or employ physicians only to carry out the duties of the county medical examiner, emphasizes our conclusion that no provision in Tenn. Code Ann. §§ 38-7-101, *et seq.* authorizes a county medical examiner to deputize a non-physician investigator to perform the county medical examiner's powers and duties under the Act.

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